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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere

Addendum

Visit to the Republic of Korea*

Summary

At the invitation of the Government, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited the Republic of Korea from 29 September to 6 October 2014.

In the present report, the Special Rapporteur addresses the legal and institutional framework for combating racism and the various policies and initiatives undertaken against racism and xenophobia by the Government, the national human rights institution and civil society. He then examines the main challenges the country faces in the fight against racism, racial discrimination, xenophobia and related intolerance, including issues related to the situation of migrants, workers in the agriculture sector and foreign seafarers, as well as acts and expressions of racism and xenophobia in the media and in the private sphere. He discusses the situation of marriage migrants and multicultural families. His recommendations to the Government and other stakeholders touch upon the main issues, such as the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the enactment of a comprehensive anti-discrimination law.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

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Annex

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Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, on his visit to the Republic of Korea (29 September–6 October 2014)

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I. Introduction

1. At the invitation of the Government, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited the Republic of Korea from 29 September to 6 October 2014.

2. The Special Rapporteur travelled to the capital city, Seoul, as well as Sejong City, Busan, Changwon and Ansan. He met with representatives from the Government at the national level, the judiciary, the prosecution services and the Korea Broadcasting Cooperation. Regrettably, the Special Rapporteur did not meet with any ministers, although he had requested meetings at that level.

3. In addition to meeting with representatives of Government and State institutions, the Special Rapporteur met with representatives of the National Human Rights Commission of Korea (NHRCK), United Nations agencies, non-governmental organizations, and community members and other groups and individuals working in the field of racism, as well as migrant workers and asylum seekers.

4. The Special Rapporteur wishes to express his sincere gratitude to the Government of the Republic of Korea for its cooperation in the conduct of the visit. He is grateful to the different State agencies for their cooperation. He is also indebted to the United Nations entities and to his interlocutors from civil society for the excellent cooperation they extended to him throughout the visit. He hopes his conclusions and recommendations will contribute to finding concrete ways and means of addressing the challenges raised in the present report in an effective and human rights-compliant manner.

II. General background

5. The Republic of Korea was proclaimed in August 1948, after the end of the Second World War, and peace agreements left the country divided from the Democratic People's Republic of Korea by drawing a line along the thirty-eighth parallel in the Korean peninsula. The country received United Nations support after it was invaded by the Democratic People's Republic of Korea two years later. The Korean War ended in 1953 without a peace agreement, leaving the Republic of Korea technically at war with the Democratic People's Republic of Korea for more than 50 years.

6. After a long period of authoritarian regimes, the country went through a democratization process in the late 1980s. At that time, the political situation was marked by significant, large-scale and occasionally violent pro-democracy protests that opposed the country's long-standing authoritarian rule. As a result of those protests, the authoritarian establishment saw its position weakened, and that weakness was seized upon by opposition leaders demanding democratic reforms. In June 1987, the ruling party's presidential candidate proposed a far-reaching democratization plan that accepted all the opposition's key demands. The Constitution was approved by popular referendum and formally adopted on 29 October 1987.

7. Since then, the Republic of Korea has been a key player in the region. It is a member of the Organization for Economic Cooperation and Development and the Group of 20. However, since the end of the Korean War in 1953, the strained relations with the Democratic People's Republic of Korea have played an important role in shaping the legal, political and institutional framework of the country. The Cheonan incident in 2010 and the nuclear test conducted by the Democratic People's Republic of Korea in early 2013 are examples of the latest tensions between the two neighbours. More recently, the tragic accident of the Sewol ferry, which led to the deaths of more than 300 persons, mostly high-

school students, led to political tensions between the Government and opposition political parties, as attempts to capitalize on the tragedy led to further polarization between the Government and the opposition.

8. Over the past 30 years, migration flows into the country have increased significantly. As at 1 January 2014, there were 1,569,470 foreign residents, including naturalized Koreans, who accounted for 3.1 per cent of the total registered population of 51,141,463. That means that 1 out of 32 persons is a foreign resident. The growing economic and social problems associated with an ageing population and a low birth rate may also present challenges to society. The birth rate is 1.19 children per woman of childrearing age and is well below the rate of replacement within the population. If those demographic trends continue, by 2060 there could be 80.6 elderly people for every 100 workers, which would present an enormous fiscal challenge to the Government.

III. Legal framework for combating racism

A. International human rights instruments

9. The Republic of Korea is party to the following core United Nations human rights treaties: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. However, it has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure or the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

10. Other international instruments ratified by the Republic of Korea include the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention against Discrimination in Education. The Republic of Korea has also ratified the Convention relating to the Status of Refugees, the Protocol relating to the Status of Refugees and the Convention relating to the Status of Stateless Persons.

B. Constitutional provisions

11. The Constitution of the Republic of Korea was adopted on 17 July 1948 and last revised on 29 October 1987, and is fundamental to the national system for promoting and protecting human rights. The Constitution has been amended nine times and almost fully rewritten five times (in 1960, 1962, 1972, 1980 and 1987).

12. The Constitution declares the Republic of Korea a democratic republic, its territory consisting of "the Korean Peninsula and its adjacent islands" and that the "Republic of Korea shall seek unification and shall formulate and carry out a policy of peaceful unification based on the principles of freedom and democracy". The Constitution of the Republic of Korea guarantees human rights and stipulates the scope of the limitation of human rights and the obligation of the State to reaffirm and guarantee the inviolability of

human rights. The Constitution stipulates that basic freedoms and rights should not be undervalued simply on the grounds that they are not specified in the Constitution. The Bill of Rights is included in the second chapter of the Constitution. Individuals are not punished, placed under preventive restrictions or subjected to involuntary labour except as provided by law and through lawful procedure. Those detained or arrested must be informed of the reason and of their right to an attorney, and family members must be informed. Warrants must be issued by a judge "through due procedures" and accused persons may sue for wrongful arrest in certain cases.

13. The relevant provisions on non-discrimination are:

(a) Article 10: All citizens shall be assured of human dignity and worth and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals;

(b) Article 11 (1): All citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status;

(c) Article 14: All citizens shall enjoy freedom of residence and the right to move at will;

(d) Article 32 (4): Special protection shall be accorded to working women, and they shall not be subjected to unjust discrimination in terms of employment, wages and working conditions.

14. The Constitution assigns territorial ownership over the entire Korean peninsula, including the Democratic People's Republic of Korea. That provision, combined with the Nationality Act, grants refugees from the Democratic People's Republic of Korea automatic citizenship in the Republic of Korea upon defecting to the country.

C. Legislative framework prohibiting racism, racial discrimination, xenophobia and related intolerance

15. In the Republic of Korea, international human rights treaties duly concluded and promulgated under the Constitution are applicable in the domestic legal system. The entire spectrum of human rights is covered by a range of specific acts and laws. No provision of an individual law can infringe human rights beyond the limitations stipulated in the Constitution and, in the case of an infringement, the matter may be referred to the Constitutional Court for a review of the constitutionality of the provision.

16. In principle, the protection of human rights is ensured through criminal punishment and compensation for damages. Administrative measures that violate human rights can be declared null or cancelled through administrative appeals or administrative litigation. In the case that a violation of fundamental human rights due to the act or omission of public power is not redressed, even after all procedural remedies have been exhausted, a complaint can be filed before the Constitutional Court. Apart from judicial decisions, victims of human rights violations can petition NHRCK and seek remedies through the recommendations of that institution.

17. The Special Rapporteur was informed that there is no legal definition of "racial discrimination" under the country's law and that there were currently no specific legislative measures, including under the Criminal Code, to prohibit and punish racially motivated criminal offences. In 2012, the Committee on the Elimination of Racial Discrimination recommended that the Republic of Korea implement reforms in that area (see CERD/C/KOR/CO/15-16, paras. 6–8). In 2011, a comprehensive draft bill on equal

treatment and non-discrimination, developed in consultation with non-governmental organizations, was proposed by the previous legislature. The draft law was rejected by the National Assembly, however, in September 2012. Although several interlocutors, including parliamentarians, supported the adoption of such a comprehensive law, the Government informed the Special Rapporteur that the matter was not a subject for debate in parliament at the time of the visit. It also seems that popular support for such a reform is lacking.

18. While there is no general law on the prohibition of discrimination, there are a number of laws that prohibit discrimination in each respective area. Those laws vary in terms of anti-discrimination grounds and scope, and the level of protection and punishment. Such laws include the National Human Rights Commission Act, the Anti-Discrimination against and Remedies for Persons with Disabilities Act, the Act on Age Discrimination Prohibition in Employment and Aged Employment Promotion, the Labour Standards Act, the Equal Employment and Support for Work-Family Reconciliation Act, the Act on the Protection, etc., of Fixed-Term and Part-Time Employees and the Act on the Protection, etc., of Dispatched Workers.

19. The Special Rapporteur was also informed of the enactment of the comprehensive Refugee Act in 2012, which he considers a welcome development given the increasing number of requests for refugee status that the Republic of Korea receives. The Special Rapporteur was able to see first hand the efforts undertaken by the Government to process claims of refugees and asylum seekers in a fair, transparent and timely manner by visiting an immigration reception centre in Incheon. Although the percentage of claims that are accepted remains very low, revision and appeal procedures have been established to ensure a fair hearing and decision by the immigration authorities for those who arrive in the Republic of Korea and seek asylum.

IV. Institutional framework for combating racism

20. The Special Rapporteur was pleased to note that there are credible institutions engaged in the fight against racism and discrimination in the Republic of Korea. During his visit, the Special Rapporteur met with representatives of NHRCK, an independent institution which is mandated to play an important role in combating racism and racial discrimination. NHRCK was set up by an act of parliament in 2001 as a national advocacy institution for human rights protection. The Commission is composed of 11 commissioners: the chairperson, 3 standing commissioners and 7 non-standing commissioners. Of the 11 commissioners, 4 are elected by the National Assembly, 4 are nominated by the President of the Republic of Korea and 3 are nominated by the Chief Justice of the Supreme Court and then approved by the President.

21. NHRCK has a mandate to investigate the human rights violations perpetrated by central and local governments and to provide remedies to the victims. The Commission also has jurisdiction over discrimination committed by private entities and organizations on the basis of sex, religion, disability, age, social status, nationality, race, region of origin, appearance, marital status, pregnancy, family status, skin colour, ideas, political orientation, sexual orientation, medical history, etc. At the same time, the Commission has the authority to conduct investigations on its own initiative if there is a reason to believe that human rights violations or discrimination have occurred and that the cases are considered crucial for the promotion and protection of human rights. The Commission has a permanent secretariat that is divided into several branches, which include the Anti-Discrimination Division. The NHRCK vision is to create a society where the dignity and human rights of all persons, including foreigners living in the Republic of Korea, are fully respected and realized. To that end, NHRCK is committed to the full implementation of all human rights set forth in the Constitution, as well as international human rights standards at the domestic

level in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

22. The Special Rapporteur was informed that NHRCK only provides recommendations to the Government, which can decide whether to follow up or not. The Special Rapporteur also notes that the NHRCK personnel was reduced by 21 per cent a few years ago and that some experienced commissioners have resigned in recent years (see CERD/C/KOR/CO/15-16, para. 18).

23. The Special Rapporteur also met with representatives of the Korea Communications Commission, which has a mandate to oversee and evaluate the content of television and radio transmissions of both public and private operators. The Commission was established under the Act on the Establishment and Operation of Korea Communication Commission and is responsible for regulating broadcasting and communication services, protecting users and ensuring the independence of broadcasting services, including monitoring hate and racist speech. The functions of the Commission include the formulation and implementation of policies pertaining to terrestrial, general and reporting programme providers; the investigation of violations by a broadcasting or communication service operator and the imposition of sanctions for such violations; the development and implementation of measures aimed at protecting users and their personal information and at preventing the circulation of illegal or harmful information; the establishment of policies on programming and evaluation; and the diversification of media.

24. At the municipal level, the Special Rapporteur was made aware that Seoul city council had established in 2012 a human rights commission by issuing the Human Rights Ordinance. The commission is composed of 15 experts who are tasked with reviewing major policies and laws related to the human rights of the citizens of Seoul and three citizens' rights guardians appointed to receive reports of human rights violations in Seoul and to investigate them. Upon finding that a violation has occurred, recommendations can be made to the mayor on related policy change. The municipal human rights commission has competence over any alleged infringements by the city government, district offices and city-sponsored welfare facilities, and serves not just registered residents of the city, but anyone who officially has a workplace in Seoul. Petitions to the commission can be filed by victims and people who have knowledge of alleged violations. Because the commission was established only recently, it is as yet unclear what its precise impact will be and how it will avoid overlapping with the work of NHRCK.

V. Public policies to combat racism, racial discrimination, xenophobia and related intolerance

25. The Republic of Korea has had in place the National Action Plan for the Promotion and Protection of Human Rights since 2007, which includes provisions relating to racism, racial discrimination, xenophobia and related intolerance. The National Action Plan was renewed in 2012 and schedules a variety of tasks, including: the establishment and implementation of the second basic plan, for 2013–2017, under the Framework Act on Treatment of Foreigners Residing in the Republic of Korea; the provision of language support and counselling to foreign workers; the strengthening of health and safety management for foreign workers; the provision of medical services to irregular foreign workers and their children; the provision of assistance for the social integration of the families of married immigrants; the prevention of domestic and sexual violence against married female immigrants and the provision of relief to such victims; the provision of support to enable married female immigrants' to gain access to facilities for providing childcare and assistance to mothers; the protection and promotion of cultural diversity; the securing of a fair procedure for determining refugee status; the protection of the rights of

applicants for refugee recognition; the provision of social security services to recognized refugees; and education on human rights. The Ministry of Justice directs the establishment and implementation of the National Action Plan, and relevant ministries and organizations carry out the specific tasks laid out. Every year, information on the National Action Plan's implementation are reported to the National Human Rights Policy Council and made public.

26. The Government established the first Basic Plan for Policies on Foreigners (2008–2012) on 17 December 2008. The purpose of the Plan was not only to eliminate direct discrimination against immigrants as members of a social minority, but also to foster a mature multicultural society through support for immigrants' social adjustment and to promote the multicultural awareness of the public. The Plan sets out to strengthen support for immigrants in order to reduce indirect social discrimination due to their delayed social adjustment, and to standardize a variety of supporting policies through the introduction of a social integration programme.

27. The Multicultural Families Support Act was adopted on 21 March 2008 and enacted on 22 September of the same year. According to that law, the term "multicultural family" applies to families consisting of nationals of the Republic of Korea and immigrant spouses (including those who are naturalized after their marriage) and their children. The law requires the national and municipal governments to actively support such families in order for them to improve their quality of life and stability. More specifically, the law requires the Ministry of Gender Equality and Family to conduct a survey every three years, to stem discrimination and prejudice and to nurture a social background that recognizes the diversity of people, as well as to provide information and education support to such families. Those measures are based on the Framework Act on Treatment of Foreigners Residing in the Republic of Korea of 2007. In that connection, the Centre to Support Immigrant Spouses, established in 2006 by the Ministry of Gender Equality and Family, changed its name to the Multicultural Family Support Centre.

28. The Multicultural Families Support Act is relevant to racism and racial discrimination in relation to the family, as it was adopted to contribute to social integration and improve the stability and quality of life of immigrant spouses. The Act also enables multicultural families to receive the necessary information on and assistance with daily life, education support, protection and support for victims of domestic violence, medical/health-care support, childcare and education support for children and multilingual services through the Multicultural Family Support Centres. However, article 2 of the Act limits the definition of a multicultural family to a union between a citizen of the Republic of Korea and a foreigner (including naturalized citizens), thereby excluding a marriage where both partners are foreigners (as is the case with most migrants).

VI. Main challenges in the fight against racism, racial discrimination, xenophobia and related intolerance

A. Migrant workers using the Employment Permit System

29. The first attempt to regulate migrant workers was made in 1992 in order to respond to labour shortages and to reduce the number of undocumented migrants. The Industrial Trainee System was initially aimed at providing training to foreign workers recruited by domestic companies to improve their skills and enhance their performance. However, most of the jobs covered by the System were considered to be "dirty", "difficult" and "dangerous". Moreover, the number of undocumented migrant workers continued to surpass the number of documented industrial trainees, which led the Government to change

the system by adopting the Employment Permit System (EPS). EPS was introduced in July 2004 in the manufacturing, construction, agriculture and livestock industries and later expanded to the service and fishing industries in 2005 and 2006, respectively, at first through bilateral memorandums of understanding signed between the Republic of Korea and sending countries that set out the rights and duties of Governments and the status of and benefits for the workers.

30. The number of migrants in the Republic of Korea has since increased steadily and reached over 1.7 million in 2014. This increase is due in part to the introduction of the more flexible EPS. Most beneficiaries of EPS are from South-East Asian countries. The Special Rapporteur was informed that the System had allowed numerous foreign workers to come to the Republic of Korea and access employment opportunities, and had benefited the country's businesses, which could recruit foreign workers through a flexible permit system for short- and medium-term periods that has contributed to the economic growth witnessed in recent years.

31. The Special Rapporteur has nonetheless been made aware that that the Government has introduced recent amendments to EPS, which in some cases require migrants to leave the country in order to be paid their severance settlement after finishing their employment contract in the Republic of Korea.

32. Although EPS recognizes migrant workers as workers under labour law, it places a number of restrictions on them, for example with regard to the number of times they can change workplace and employment and the maximum period of stay, denies them the right to family reunification and places extreme burdens on migrants seeking to change the type of visa. The Special Rapporteur is particularly concerned about several restrictions and requirements within the System that increase the likelihood of migrant workers being subjected to human and labour rights abuses by their employers, who can, for example, terminate a migrant's contract without having to justify the decision. Nonetheless, job centres do have direct authority to proceed with a change in the worker's employment without the employer's consent if the worker applies for a change of employment and if the reason for doing so does not originate with the employee. Such a change in employment would not be included in the total number of workplace changes permitted during the worker's employment in the Republic of Korea. Nevertheless, the inability to freely change employment can easily place migrant workers in situations of labour exploitation. In addition, a change in employment can jeopardize a migrant's chance of extending his or her initial contract in the Republic of Korea.

33. Further limitations contained in the System make it almost impossible for a migrant worker recruited under the scheme to be granted permanent or long-term residency, or even to convert to another type of visa, as EPS is limited to a maximum of 4 years and 10 months.

34. The Special Rapporteur notes that the International Labour Organization Committee of Experts on the Application of Conventions and Recommendations, in its 2013 observation on the Convention concerning Discrimination in Respect of Employment and Education (No. 111),[1] and the Special Rapporteur on the human rights of migrants (A/HRC/4/24/Add.2) have pointed out the problems of those cases and recommended that the Government take legal measures for rectification of discrimination.

35. The Special Rapporteur has also been informed that migrant workers in the Republic of Korea also experience discrimination on the grounds of sex, race, colour and country of

[1] Available from www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3150326.

origin. Migrant workers hired through EPS, some of whom work in poor conditions, are vulnerable to physical violence, verbal abuse, unpaid wages and minimum wage violations. Migrant workers are currently not allowed to join an independent labour union. The case of a trade union formed nine years ago by some migrant workers remains pending before the Supreme Court of the Republic of Korea, which has yet to recognize that union as legal.

B. Workers in the agriculture sector

36. The Special Rapporteur was informed about the situation of migrant workers in the agriculture industry. Through first-hand meetings with migrant workers in this sector, he was made aware of the difficult working and living conditions they face, which include working in small farms, in isolated areas of the country, in the cold winter and in the hot summer, particularly in greenhouses.

37. Migrant workers in the agriculture and livestock industries of the Republic of Korea face worse conditions than those hired in the manufacturing, construction and service industries. The Special Rapporteur was informed that some of the articles of the Labour Standards Act do not apply to labourers in the agriculture and livestock industries, as article 63 of the Act specifically excludes those workers from protections relating to working hours, paid weekly rest days and daily breaks. Such exclusion is not only discriminatory but also disproportionately affects migrant workers in the agriculture sector.

38. Furthermore, these migrant workers are not entitled to receive overtime pay or additional pay for any night or holiday work. Low-wage work and long hours are customary for labourers in the agriculture and livestock industries. In its 2013 fact-finding report on the human rights situation of migrant workers in the agricultural and stockbreeding industries,[2] NHRCK states that migrant workers in those industries worked an average of 284 hours, with just two days' rest every month, and received an average monthly wage of 1,270,000 won, which is below the minimum hourly wage and would equate to a monthly salary of 1,380,000 won.

39. In addition, such migrant workers are often assigned tasks that are much more difficult and strenuous than those assigned to their counterparts from the Republic of Korea. Given their isolation, it is particularly difficult for migrant workers to report violations of the Labour Standards Act and to change employment, as they have to go through the job centres and provide justification in order to be allowed to change employer. The Special Rapporteur was informed that migrant workers in the agriculture and livestock industries could transfer only to the construction, fishing or service industries.

40. Furthermore, since most migrant workers work in conservative, rural communities, they are especially vulnerable to discrimination. Migrant workers in the agriculture and livestock industries work and live in closed and isolated rural communities that consist mainly of farm owners and their families. As such, they are vulnerable to various forms of discrimination resulting from old-fashioned employment practices, disrespect for foreigners and limited-duration visa status given their short-term contracts as labourers. The Special Rapporteur was also informed that, in some rural communities, labourers have traditionally been regarded as servants, a perception that can lead to verbal abuse, physical violence, sexual abuse and violation of their privacy, as they live in their employer's household.

[2] Available from www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf (Korean only).

41. With poor communication skills in Korean and the inability to improve their language skills owing to their long working hours and the geographical isolation from urban areas and the prejudice and disrespect shown towards workers in the agriculture and livestock industries, migrant workers in these sectors are particularly vulnerable to exploitation and discrimination. Moreover, with no labour union on their side, they face threats of dismissal and expulsion if they challenge their employer.

C. Foreign seafarers on the high seas

42. The Special Rapporteur was informed that the number of migrant workers on fishing vessels registered in the Republic of Korea has been rapidly increasing and that the country's fishing industry is now much more dependent on migrant workers than any other industry. According to government statistics, as of December 2013, about 70 per cent of seafarers in deep-sea fishing vessels and 28 per cent of seafarers in offshore fishing vessels were foreign workers.

43. In meetings in Busan, foreign seafarers informed the Special Rapporteur of their difficult working conditions on board the fishing vessels. Foreign seafarers are often assigned the most difficult tasks and paid less than their counterparts from the Republic of Korea. In addition, they are not entitled to a share of the catch, which is a requisite for seafarers from the Republic of Korea. While the wage of seafarers from the Republic of Korea is composed of a monthly fixed wage and a share of the catch, which is usually worth much more than the wage, foreign seafarers are paid only a monthly minimum wage without any share of their catch. Since the minimum wage is determined per month regardless of their working hours, foreign seafarers receive only that fixed minimum wage, even though they work 24 hours a day.

44. Although seafarers are entitled to a minimum wage under the Seafarers Act, which states that the minimum wage for seafarers should be determined by a collective agreement between the federation of seafarers' unions and the federation of vessel owners' associations, those unions do not accept foreign seafarers as members, although they are still authorized to represent them in collective bargaining. The Special Rapporteur was informed that, on average, seafarers from the Republic of Korea were paid three times more than their foreign counterparts. In addition, foreign seafarers working on vessels registered in the Republic of Korea are not regulated by the Labour Standards Acts, nor are they covered under the rules of EPS. Once fishing vessels carrying foreign seafarers set sail, they stay on the high seas for periods of up to one month, which makes it very difficult for those seafarers to report abuse. The Special Rapporteur was informed that no limit is imposed on the number of applications those seafarers could submit to the Immigration Office to change their employer.

45. Moreover, the Special Rapporteur was informed that foreign seafarers are allegedly often subjected to racist and xenophobic verbal and physical abuse by ship owners and captains, as well as by fellow seafarers from the Republic of Korea. However, they are not able to walk off the vessel because their employer usually holds a deposit, such as a large sum of money or a land certificate, as security supplied by their employment agency in their home country. Although the Immigration Act specifically prohibits the withholding of a foreigner's passport or Alien Registration Card as a means to ensure a contract for his or her employment or the payment of the debt, some vessel owners or management agencies appear to confiscate the passports, identification documents or even bankbooks of foreign seafarers in order to prevent them running away.

46. Finally, foreign seafarers face difficulty in reporting abuse to the maritime police or visiting a local maritime affairs or port owing to the language barrier or the distance of working location. There have been reports that when foreign seafarers have contacted a

person in their management agency who can speak their language, this person did not report problems to the authorities but took sides with the vessel owner. In port cities, local authorities often have a close relationship with vessel owners, which results in foreign seafarers who report abuse being penalized by the authorities.

D. Marriage migrants

47. Men from the Republic of Korea began to marry foreign women in the 1990s and the phenomenon has rapidly increased since 2000, when commercialized marriage brokers were first allowed to facilitate this new type of marriage. These brokers would recruit men from the Republic of Korea who would visit other Asian countries to meet potential brides. Within two weeks, they would meet women and get married to the woman they chose. The men would be liable for all or the majority of the costs of the process. It is estimated that around 20,000 couples get married every year as part of these arrangements; approximately around 1 out of 10 marriages concluded in the Republic of Korea.

48. The Special Rapporteur was informed of the numerous efforts made by the Government to support multicultural families and, in particular, the comprehensive assistance for integrating marriage migrants (persons who migrate to the Republic of Korea by marrying a national of that country) and their children as full members of society. Numerous services for multicultural families have been made available, such as the multicultural families support centres throughout the country, which offer language classes and counselling to both spouses and help marriage migrants and their children to settle and integrate into society. However, the policy for multicultural families is in the vast majority of cases applied to foreign women who marry men from the Republic of Korea and not vice versa. The legal definition of these marriages does not extend to the marriage of two migrant workers.

49. Moreover, the Multicultural Families Support Act narrowly defines the multicultural family as: (a) a family composed of a marriage migrant and a citizen of the Republic of Korea who acquired citizenship at birth; and (b) a family composed of a naturalized citizen and a citizen of the Republic of Korea who acquired citizenship at birth. It does not include in its definition other types of migrant families, such as the families of migrant workers or ethnic Korean families from China, the Democratic People's Republic of Korea and Central Asian countries.

50. The Special Rapporteur has also been informed that, since 2011, men from the Republic of Korea who plan to marry a foreign spouse from certain countries are required to attend an international marriage orientation programme. The Minister of Justice announced the countries concerned as Cambodia, China, Mongolia, the Philippines, Thailand, Uzbekistan and Viet Nam. According to the Ministry of Justice, those countries were targeted because the statistics showed a higher rate of divorce and naturalization in a marriage when one spouse was from one of those countries. Thus, immigrants from those countries are allowed to apply for a marriage visa only when their spouses from the Republic of Korea take the international marriage orientation programme.

51. Similarly, the concept of multicultural families as currently interpreted and applied has some limitations and has been used in the media to convey negative connotations of marriage migrants and foreign workers from South-East Asia.

52. The Special Rapporteur was informed that, on 5 April 2011, the Government had added article 25-2 to the Immigration Act. In accordance with that article, relating to special rules applicable to marriage migrants, marriage migrants who are allegedly abused by their spouses from the Republic of Korea may be granted an extension of stay until a remedy process, including a pending court trial, an investigation by law enforcement

agencies or an administrative remedy under applicable laws and regulations, is completed. Even after the previously extended stay, such marriage migrants may be permitted a further extension if deemed necessary for their recovery. In addition, the Special Rapporteur was informed that marriage migrants may be permitted to remain in the Republic of Korea even after separation or divorce, if they are raising an underage child or are not found to be responsible for the termination of marriage (in cases where the spouse from the Republic of Korea is missing or dead, or at fault for the divorce).

E. Private acts of racism and xenophobia

53. The Special Rapporteur, while noting that he had not been informed of or seen any racist or xenophobic discourse or practice at the institutional level, was nevertheless made aware of several incidents of private acts of racism, racial discrimination and xenophobia. The incidents included a naturalized woman being refused entry to a public bath by the bath's management, taxi drivers turning customers who do not look ethnic Korean in to the police and shop attendants expressing derogatory attitudes to foreign customers. Although these may be isolated incidents, it is essential for the Government to address the issue of racism and xenophobia through better education and awareness-raising.

54. The Special Rapporteur would like to highlight the role that education plays in combating racism and xenophobia and recall his report on the role of education to prevent racism, racial discrimination, xenophobia and related intolerance (A/HRC/23/56), in which he stressed the fundamental role of education in the effective enjoyment of all other human rights, as education is known to act as a multiplier in enhancing the other human rights and freedoms. The role of teachers and educators is particularly important and they should be given specialized training, including in the prevention of racism, xenophobia and other forms of discrimination, with special emphasis on the situation of migrants, refugees and asylum seekers or other vulnerable groups. Similarly, human rights education and anti-discrimination training should also be emphasized in schools and universities. Teachers, journalists, state officials, civil servants, judges and law enforcement officials should be given such training, and particular emphasis in the curriculum should be given to international norms prohibiting racism and racial discrimination.

55. The Special Rapporteur was informed of the existence of nationalist groups and movements that openly advocate the abolition of the policy of providing support to multicultural families, claiming that the policy enacted by the Government discriminates against citizens, as they are not entitled to similar social benefits or programmes. The Special Rapporteur expresses concerns about the dissemination of inaccurate information by those groups and movements, as he was assured that the same social benefits are offered to citizens under the regular social protection scheme. It is important for the Government to dispel such myths and clarify the situation in order to prevent the proliferation of racist and xenophobic movements, as the country's society has become more exposed to foreign nationals and migrant workers.

F. Racism in the media

56. The Special Rapporteur notes that, in the society of the Republic of Korea, the media (written, broadcasted and online) are accessible, independent and offer vibrant coverage of news and issues. He recalls that the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, in the report on his visit to the country, commended the existence of media pluralism and praised some of the results achieved, which had resulted in one of the highest rates of broadband Internet penetration in the world (see A/HRC/17/27/Add.2 and Corr.1, paras. 87 and 101).

57. The accessibility of the mass media in everyday life has had an effect on the awareness and value judgement of the country's citizens. In addition, the high levels of Internet penetration and usage mean that media reports, television programmes and films are easily accessible through tablets and smartphones. That can lead to stories covered in the media sometimes being disseminated without their authenticity being verified, and that does irreparable damage and harm, even when corrections are made afterwards.

58. The Special Rapporteur also recalls that, in its 2012 concluding observations, the Committee on the Elimination of Racial Discrimination noted the following with regard to the Republic of Korea (see CERD/C/KOR/CO/15-16, para. 10):

> Racist hate speech directed against non-citizens is becoming more widespread and explicit in the media and on the Internet. The Committee notes that the fundamental right to freedom of expression of the individuals involved does not protect the dissemination of ideas of racial superiority or incitement to racial hatred … The Committee recommends that the State party monitor the media, Internet and social network to identify those individuals or groups who disseminate ideas based on racial superiority or incite to racial hatred against foreigners [and] that the State party prosecute and adequately punish the authors of such acts.

59. The Special Rapporteur was made aware during his encounters with relevant stakeholders of the significance of the term "multicultural", which in the society of the Republic of Korea is now a reference to a specific group of persons and is used to refer sometimes in a derogatory manner by the media to migrant men from Asia (originally migrant workers) and marriage migrant women (generally having married through religious groups or marriage brokers), and is quite different from its legal definition in the Multicultural Families Support Act, where it refers to families whose members are migrants married to citizens and children who were born to them or adopted.

60. The broadcasting industry has begun showing "multicultural" programmes in response to the increase in the number of multicultural families, such as the television programme "Love in Asia" (from KBS), the longest-running multicultural programme, and the Multicultural Hope Project (from MBC). Although those programmes show model multicultural families and how well they have adapted to the country's society, other television programmes display multiculturalism in a derogatory and condescending manner and contribute to reinforcing stereotypes of and prejudice against multicultural families. As the perception of foreigners and migrants is largely derived from the media, these messages, either positive or negative, have a powerful impact on the collective consciousness. Similarly, advertisements broadcast on television have, on occasion, reinforced negative perceptions of foreigners, migrants and families with a multicultural background.

61. The Special Rapporteur was informed that, in 2013, NHRCK made recommendations to four public television broadcasting companies, including public channels, and four general programming cable channels to ensure that discriminatory expressions towards migrants and foreigners were not broadcast on television and that specific measures to prevent further occurrences were taken. NHRCK also called on the Korea Communication Standards Commission, when reviewing television programmes, to check for such content, in particular racial stereotypes, manifestations of prejudice and the use of discriminatory language towards migrants and foreigners, in accordance with article 6 of the Broadcasting Act and articles 29 and 312 of the broadcasting deliberation regulations, which provide criteria for assessing whether any content can be qualified as racial prejudice or xenophobia, religious prejudice or cultural, religious or ethnic intolerance.

62. The Special Rapporteur welcomes the recommendations of NHRCK and hopes that broadcasting companies, in particular television stations, will follow suit by setting out clear guidelines for the prevention of racism and xenophobia in their programmes.

VII. Conclusions and recommendations

63. **The Special Rapporteur thanks the Government for its cooperation before and during the visit, which allowed him to meet interlocutors from all relevant ministries, the judiciary and NHRCK. He is also extremely grateful to the United Nations agencies present in the country, non-governmental organizations, community members and other groups and individuals working against racism and xenophobia, as well as individual migrant workers and asylum seekers with whom he met and who have been very helpful in explaining the issues at stake.**

64. **The Republic of Korea has undergone dramatic changes over the past decades, including significant positive developments in the area of human rights, reflected in the well-respected National Human Rights Commission and the vibrant civil society, which play a fundamental role in safeguarding the progress made. Similarly, the Republic of Korea has made important progress in addressing the issue of racism and xenophobia, considering its long history of ethnic and cultural homogeneity. Only recently, as the country has consolidated its rapid economic development and industrialization, has it been faced with the progressive arrival of foreigners and migrant workers and started to open up to multiculturalism and cultural diversity. These developments have provoked an important and essential debate on multiculturalism, racism and xenophobia in the country.**

65. **It is therefore important that the numerous efforts undertaken by all stakeholders, including the Government of the Republic of Korea, to combat racism, xenophobia and other forms of discrimination continue, especially at times of economic slowdown, when the temptation to divert energy and resources to other issues is strong.**

66. **In that connection and in a spirit of constructive dialogue with the authorities and other stakeholders, the Special Rapporteur wishes to make the recommendations below to the Government of the Republic of Korea.**

On the legal framework

67. **The Special Rapporteur recommends that the Government:**

(a) **Expedite the ratification of United Nations treaties that it has not yet ratified, particularly the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, recalling the previous recommendations made by the Special Rapporteur on the human rights of migrants, the concluding observations of the Committee on the Elimination of Racial Discrimination and the recommendations of the Special Rapporteur on the situation of human rights defenders;**

(b) **Ratify the following fundamental International Labour Organization conventions: Forced Labour, 1930 (No. 29), Freedom of Association and Protection of the Right to Organise, 1948 (No. 87), Right to Organise and Collective Bargaining, 1949 (No. 98), Abolition of Forced Labour, 1957 (No. 105), Labour Inspection (Agriculture), 1969 (No. 129), Migration for Employment (Revised), 1949 (No. 97) and Migrant Workers (Supplementary Provisions), 1975 (No. 143);**

(c) Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which it signed in 2000;

(d) Take action on the finalization and adoption of the comprehensive law to prohibit all forms of discrimination or another such comprehensive law prohibiting racial discrimination;

(e) Amend the Criminal Code and other relevant penal laws in order to include racial discrimination as a criminal offence and adopt the legislation necessary to criminalize racial discrimination, provide for adequate sentences to the gravity of the offence and make racial discrimination an aggravating circumstance when another offence is committed, and provide for appropriate reparations to the victims.

On the institutional framework

68. **The Special Rapporteur recommends that the Government strengthen its cooperation with NHRCK in ensuring its full independence and effectiveness and its autonomy to manage its resources and select its own staff, in order to allow it to play a more significant role in receiving complaints from victims of racism and xenophobia, conduct investigations and issue relevant recommendations to the Government, which could be followed up in a similar manner as has been done recently with the adoption of comprehensive laws prohibiting discrimination against women and persons with disabilities.**

On migrant workers

69. **The Special Rapporteur recommends that the Government make the necessary amendments to EPS, in particular with regard to: the complexity and variety of types of visa; discrimination based on the country of origin; limitations on migrant workers' ability to change employment; and the maximum period of stay allowed. In particular, he recommends removing the restrictions on the number of job changes allowed to EPS workers, allowing all EPS workers to change employment without a release form from their employer and ensuring that the rights covered under the Labour Standards Act are extended to all workers, including migrant workers, irrespective of which sector they work in, in particular with respect to work hours, daily breaks and weekly paid rest days.**

70. **For migrant workers in the agriculture sector, the Special Rapporteur recommends that the Government: ensure that all are paid the full overtime rate for any work performed outside the regulated hours, as set out in article 56 of the Labour Standards Act; clarify what constitutes adequate food and accommodation when those are included as part of a migrant worker's contract; ensure that the Ministry of Employment and Labour regularly inspects all farms to ensure the proper implementation of the Labour Standards Act and EPS contracts; and take appropriate action to remedy the situation, including appropriate sanctions against employers who are in breach of their obligations.**

71. **In relation to foreign seafarers working on vessels registered in the Republic of Korea, the Special Rapporteur recommends that the Government sanction the discriminatory application of minimum wages between seafarers from the Republic of Korea and foreign seafarers on such vessels on the high seas; enable foreign seafarers to also benefit from a share of the catch; eradicate the practice of employers deliberately retaining identification documents and bankbooks of foreign seafarers; train employers and fishermen of the Republic of Korea on practical measures to eradicate verbal and physical abuse towards foreign fishermen; ensure proper**

inspection by officials of the Ministry of Fisheries and Oceans of vessels on which foreign seafarers are employed; establish a reporting mechanism for foreign seafarers to register violations and abuse by their employer and co-workers from the Republic of Korea, accessible in their languages; and take rapid action, including appropriate sanctions when such violations are found.

On marriage migrants and multicultural families

72. **The Special Rapporteur recommends that the Government grant equal rights, in the case of separation or divorce, to migrant women married to men who are nationals of the Republic of Korea, including with regard to stability of residency, notwithstanding the outcome or duration of the marriage and whether or not any children were born from the union. The Special Rapporteur also recommends that the Government work towards ending the practice of requiring men who are nationals of the Republic of Korea and who wish to marry women from certain countries to undergo the international marriage orientation programme; ensure that international marriage agencies whose staff exhibit racism and sexism are properly sanctioned; and conduct a wide-ranging public awareness campaign to end racism and xenophobia concerning international marriages, including redefining the concept of multicultural families and recognizing the benefits they bring to society.**

73. **The Special Rapporteur also recommends that the Government ensure that foreign women who are victims of domestic violence, sexual abuse, trafficking or other forms of violence be informed of their rights and given proper access to justice. Women victims of violence should be given the right to legally remain in the country if they so wish.**

74. **The Special Rapporteur also recommends that the Government broaden the definition of multicultural families to include unions between foreigners or inter-ethnic unions in order to integrate those who are presently excluded from the social benefits provided for under the Multicultural Families Support Act.**

75. **The Special Rapporteur also recommends that the authorities revise the school curriculum in order to raise awareness and promote acceptance of multiculturalism and the contribution of migrants to society from an early age. The Special Rapporteur recalls that education is fundamental in combating racism, racial discrimination, xenophobia and related intolerance and in promoting the principles of tolerance and respect to ethnic, religious and cultural diversity.**

On racism and xenophobic discourse promoted by private actors

76. **The Special Rapporteur calls upon the Government to strengthen mechanisms for preventing and eliminating xenophobic discourse against foreigners, migrants and multicultural families, including among politicians and political leaders. That phenomenon should be tackled at all levels, including at the national, regional and local levels. The Special Rapporteur recalls that leaders have a responsibility to strongly denounce such discourse, including when it comes from within their own ranks. In particular, politicians from mainstream political parties should avoid xenophobic discourse and the scapegoating of foreigners, migrant workers and multicultural families, and promptly denounce false allegations, especially those concerning social benefits and programmes supporting the integration of migrants and multicultural families and children. The Special Rapporteur also recommends collecting disaggregated data and statistics on the number of cases of racism and xenophobia reported to the authorities, including the percentage of investigations and prosecutions undertaken following such complaints and their outcome.**

On racism in the media

77. **The Special Rapporteur recalls the fundamental role played by the media in promoting diversity and shaping opinions and attitudes. In that regard, the positive role and influence of the media should be used to promote tolerance and respect for diversity. The Special Rapporteur encourages a diversity of voices in the media, which can be done by providing incentives and support to community media and visibility and voices to victims of racism and xenophobia. He also recommends that the media develop and implement voluntary ethical codes of conduct and self-regulatory measures, policies and practices to combat racism and xenophobia.**

78. **The Special Rapporteur also encourages the Government to take stricter measures to prevent and eliminate hate speech and xenophobia on the Internet and to combat impunity for such acts. In that regard, he recommends the prompt prosecution of perpetrators and appropriate sanctioning where relevant.**

On refugees, asylum seekers and stateless persons

79. **The Special Rapporteur welcomes the enactment of a comprehensive Refugee Act in 2012, and recommends that the relevant authorities process asylum claims within a shorter time frame. He also recommends that the Government ensure free legal laid to asylum seekers, and adequate training on human rights and asylum procedures for law enforcement agents. The Special Rapporteur also recommends the adoption of a gender perspective in the treatment of asylum requests filed by women and the implementation of gender-based measures, such as providing same-sex interviewers and interpreters. The Special Rapporteur proposes facilitation of access to asylum procedures for women victims or potential victims of trafficking in line with guideline No. 7 of the Guidelines on International Protection of the Office of the United Nations High Commissioner for Refugees on the application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked.**